



4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 3, 61, 63, and 65

[Docket No.: FAA-2018-0656; Notice No. 18-03]

RIN 2120-AL04

Security Threat Disqualification Update

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend and consolidate the security threat disqualification regulations. This proposed rule would outline the FAA actions on certificates or applications for certificates when the Transportation Security Administration (TSA) notifies the FAA that an individual poses a security threat.

DATES: Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2018-0656 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- **Mail:** Send comments to Docket Operations, M-30; US Department of Transportation, 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at (202) 493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Courtney Freeman, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-3073; email Courtney.Freeman@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA

Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This rulemaking is also promulgated pursuant to 49 U.S.C. 46111, which requires the Administrator to amend, modify, suspend, or revoke any certificate or any part of a certificate issued under Title 49 when the TSA notifies the FAA that the holder of the certificate poses or is suspected of posing a risk of air piracy or terrorism or a threat to airline or passenger safety.

Additionally, this rulemaking is promulgated pursuant to 49 U.S.C. 44903(j)(2)(D)(i), which requires that TSA coordinate with the Administrator of the FAA to ensure that individuals are screened before being certificated by the FAA. Thus, the FAA will not issue a certificate to screened individuals identified by TSA as security threats.

I. Executive Summary

A. Purpose of the Regulatory Action

This proposed rulemaking would amend and consolidate the current FAA security threat disqualification regulations found in 14 CFR 61.18, 63.14, and 65.14 into part 3 of Title 14 of the Code of Federal Regulations (14 CFR). Those regulations provide, in sum, that no person is eligible to hold a certificate, rating, or authorization issued under each of

those parts when the TSA notifies the FAA in writing of an adverse security threat determination.

Since 2004, the FAA has not applied these regulations to United States (U.S.) citizens or resident aliens, instead relying on the statutory authority in 49 U.S.C. 46111, Pub. L. 108-176 (Dec. 12, 2003), and 49 U.S.C. 44903(j)(2)(D)(i), Pub. L. 108-458 (Dec. 17, 2004), enacted after the FAA issued its security threat disqualification regulations. Section 46111 directs the FAA to take action against “any part of a certificate” issued under Title 49 in response to a security threat determination by the TSA and also provides a hearing and appeal process for U.S. citizens. Section 44903(j)(2)(D)(i) provides that individuals will be screened against the consolidated and integrated terrorist watchlist maintained by the federal government prior to being certificated by the FAA. This proposed rule is necessary to conform the above-cited FAA regulations to 49 U.S.C. 46111 and 44903(j)(2)(D)(i) and to clarify the FAA’s process for preventing the issuance of certificates to applicants that the TSA finds to be security threats.

Consistent with 49 U.S.C. 46111 and 44903(j)(2)(D)(i), the proposed security threat regulations describe the actions the FAA will take on a certificate or certificate application when it receives notification from the TSA that an individual is a security threat. As with current practice under the statute, the FAA would not issue a certificate or any part of a certificate when the TSA has notified the FAA in writing that the individual poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. For certificates already issued, the FAA would amend, modify, suspend, or revoke any FAA-issued certificate or part of such certificate upon written

notification from the TSA that the certificate holder poses, or is suspected of posing a risk of air piracy or terrorism or a threat to airline or passenger safety.¹

B. Costs and Benefits

This rule is not expected to impose anything other than minimal cost, if any. The proposed regulations would merely codify existing, statutorily-mandated procedures that FAA has been following since 2004. This proposed rule, therefore, would not have significant economic impact within the meaning of Executive Order 12866 and DOT's policies and procedures.

II. Background

A. Current Statutory and Regulatory Structure Governing Security Threat Disqualification

In response to the attack on the United States on September 11, 2001, the FAA issued the current security threat disqualification regulations to prevent a possible imminent hazard to aircraft, persons, and property within the United States. Specifically, in 2003, the FAA, in consultation with the TSA, determined that security threat disqualification regulations were necessary to minimize security threats and potential security vulnerabilities to the fullest extent possible. The FAA, the TSA, and other federal security agencies were concerned about the potential use of aircraft to carry out further terrorist acts in the United States. Accordingly, the FAA issued a final rule, Ineligibility for an Airman Certificate Based on Security Grounds, 68 FR 3772 (Jan. 24, 2003), providing that an individual determined by the TSA to be a security threat is ineligible for airman certification and thus cannot not hold an FAA-issued airman certificate. The FAA

¹ The TSA directs what specific action the FAA should take on the certificate and includes that information in the letter notifying the FAA of the security threat determination.

took this action because a person who poses a security threat should not be in a position that could be used to take actions that are contrary to civil aviation security and, therefore, safety in air commerce. These security threat disqualification regulations are found in §§ 61.18, 63.14, and 65.14.

Subsequent to the issuance of the current FAA security threat disqualification regulations, the President signed into law 49 U.S.C. 46111² and 49 U.S.C. 44903(j)(2)(D)(i).³ Section 46111 requires the FAA to amend, modify, suspend, or revoke certificates or any part of a certificate issued under Title 49, when the TSA informs the FAA that the holder “poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.” Under section 44903(j)(2)(D)(i), the TSA and the FAA must work together to “ensure that individuals are screened . . . before being certificated by the [FAA].” After the passage of these statutes, the FAA did not update its regulations, though it did publish in the Federal Register its disposition of comments to the 2003 final rule which noted that if additional rulemaking was necessary to reflect the statutory requirements of 46111, the FAA would utilize notice and comment rulemaking.⁴ The FAA’s Federal Register document also summarized two D.C. Circuit cases from 2004 that sought judicial review of the FAA and the TSA’s security threat disqualification regulations. In one of those cases, Coalition of Airline Pilots Associations v. FAA, 370 F.3d 1184 (D.C. Cir. 2004), the FAA, the TSA, and the

² Vision 100 – Century of Aviation Reauthorization Act, Pub. L. 108-176, 117 Stat. 2490 (Dec. 12, 2003).

³ Intelligence Reform and Terrorism Prevention Act, Pub. L. 108-458, 118 Stat. 3638 (Dec. 17, 2004).

⁴ Ineligibility for an Airman Certificate Based on Security Grounds, 70 FR 25761 (May 16, 2005).

Department of Justice pledged not to apply existing regulations to U.S. citizens or resident aliens, as further addressed in the Discussion of the Proposal.⁵

III. Discussion of the Proposal

A. Scope

The proposed rule would codify the FAA's authority to amend, modify, suspend, and revoke FAA-issued certificates and any part of such certificates issued to individuals under Title 49 based on the TSA's written notification that a certificate holder poses a security threat. The proposed rule would also clarify the FAA's authority to deny or hold in abeyance applications for certificates and any parts of such certificates when the TSA notifies the FAA that an applicant poses a security threat. The proposed rule would implement the security threat disqualification requirement mandated in 49 U.S.C. 46111 and 44903(j)(2)(D)(i).

Both 49 U.S.C. 46111 and 44903(j)(2)(D)(i), on which this proposed rule relies, refer to certificate holders and applicants in terms of individuals, rather than entities.⁶ While there is separate statutory authority for FAA certificate-action against entities based on TSA security threat determinations,⁷ this proposed rule addresses only individuals who hold or are applying for certificates issued under Title 49 of the United States Code.

⁵ Memorandum to the Dockets, TSA Rulemaking Dockets Nos. TSA-2002-13732 and TSA-2002-13733, Transportation Security Administration, U.S. Department of Homeland Security (Mar. 16, 2004).

⁶ See, e.g., 49 U.S.C. § 46111(b) (allowing "individuals" who are U.S. citizens to have a hearing on the record); § 46111(f) ("An *individual* who commences an appeal"); § 46111(g)(3) ("upon request of the *individual* adversely affected by an order of the [FAA] Administrator"); 49 U.S.C. § 44903(j)(2)(D)(i) (requiring screening of "individuals"); Cf. *Transportation Security Administration (TSA) Vetting of Airmen Certificates and General Aviation Airport Access and Security Procedures*, DHS OIG (July 2011), https://www.oig.dhs.gov/assets/Mgmt/OIG_11-96_Jul11.pdf; Memorandum To The Dockets, TSA Rulemaking Dockets Nos. TSA-2002-13732 and TSA-2002-13733, Transportation Security Administration, U.S. Department of Homeland Security (Mar. 16, 2004).

⁷ For example, 49 U.S.C. § 44924, provides for FAA suspension or revocation of a repair station's certificate based on a TSA determination regarding the repair station's security measures and security risk.

B. Certificate Applicants

While 49 U.S.C. 46111 sets out a mechanism by which the FAA handles the amendment, modification, suspension, or revocation of an individual's certificate, it is silent as to how the FAA should handle security threat determinations at the certificate application stage. This proposed rule would codify the FAA's process for preventing the issuance of certificates to individuals at the application stage when the TSA finds the individuals to be security threats. FAA's authority to deny or hold in abeyance an individual's certificate application based on the TSA's written notification that an individual poses a security threat is necessary to implement the intent of 49 U.S.C. 44903(j)(2)(D)(i), which requires the FAA to coordinate with the TSA to ensure that certificate applicants are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the federal government before being certificated by the FAA.

The FAA must not issue certificates to individuals who the TSA finds to be a security threat. The proposed rule would provide that, upon notification from the TSA, the FAA would hold in abeyance the applications of these individuals while they are provided the opportunity to appeal the TSA's security threat determination under the TSA's appeal process. The FAA would deny an application only upon the TSA's notification of a final security threat determination. Alternatively, if the TSA notifies the FAA that it has withdrawn its security threat determination, the FAA would continue processing the application.

C. Application of Regulations to U.S. Citizens and Resident Aliens

The FAA proposes to apply the security threat disqualification regulations to all individuals, including U.S. citizens and resident aliens, who hold FAA-issued certificates or are applying for these certificates. This approach would harmonize the proposed security threat disqualification regulations with 49 U.S.C. 46111 and 44903(j)(2)(D)(i). It would also close a gap in the FAA's security threat disqualification regulations which are currently not being applied to U.S. citizens and resident aliens as a result of a pledge made by the FAA and the TSA in the case Coalition of Airline Pilots Associations v. FAA, 370 F.3d 1184 (D.C. Cir. 2004). In the Coalition of Airline Pilots Associations case, unions representing aviation workers raised various challenges to the TSA and the FAA's current security threat disqualification regulations. The D.C. Circuit never reached the merits of the unions' claims. Instead, the Court dismissed the unions' petition for review, finding that intervening events had mooted their claims, specifically the new laws enacted by Congress. Both the TSA and the FAA pledged that the existing security threat regulations would no longer be applied to U.S. citizens or resident aliens as a result of the passage of § 46111 which provides a different mechanism for TSA security threat determinations and appeal procedures for U.S. citizens.⁸ The agencies also noted that when they issued new security threat disqualification regulations they would do so pursuant to notice and comment rulemaking. Another D.C. Circuit decision, decided on the same day as the Coalition of Airline Pilots Associations case, upheld the application of the same FAA security threat disqualification regulations to non-resident aliens because the regulations provide sufficient due process for non-resident aliens. Jifry v.

⁸ Memorandum to the Dockets, TSA Rulemaking Dockets Nos. TSA-2002-13732 and TSA-2002-13733, Transportation Security Administration, U.S. Department of Homeland Security (Mar. 16, 2004)

FAA, 370 F.3d 1174 (D.C. Cir. 2004). This proposal would establish regulations that apply equally to all certificate holders and applicants.

D. TSA Security Threat Determinations and Appeals

The FAA's certificate denials are generally covered under 49 U.S.C. 44703 and, therefore, are appealable to the National Transportation Safety Board (NTSB). In cases of security threat disqualifications, if the certificate action is appealable to the NTSB, the FAA does not anticipate that the scope of these appeals would extend beyond an examination of the procedural ground for the certificate action or application denial because an affected individual would be provided the opportunity to challenge the substance of TSA's security threat determination under TSA's appeal process.⁹

In the case of a security threat disqualification, the certificate action or application denial would be based on the TSA's applicant vetting and security threat determinations, as mandated under 49 U.S.C. 46111 and 44903(j)(2)(D)(i). The FAA's reliance on TSA's vetting and security threat determinations is also based on the broad statutory authority and responsibility that the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, (115 Stat. 597, Nov. 19, 2001), placed in the office of the Under Secretary of Transportation for Security with regard to intelligence information and security threat assessments. The FAA is not privy to the basis for the TSA's security threat determinations, which often include classified information. Therefore, the FAA's certificate actions and application denials are based solely on written notification by the

⁹ The appropriate venue for appealing a certificate action based on a security threat determination was also discussed substantially in Jifry v. FAA, 370 F.3d 1174 (D.C. Cir. 2004). The court stated that "Section 46111 makes no provision for NTSB review even for citizens, and the Conference Report states that non-resident aliens 'have the right to the appeal procedures that [TSA] has already provided for them.' H.R. Conf. Rpt. 108-334 at 152 (2003). In addition, § 46111(a) requires the FAA to respond automatically to TSA threat assessments . . . if these pilots retain any right to NTSB review at all, it is no broader than the review for procedural regularity that they have received . . ." Jifry at 1180.

TSA of a security threat determination against an individual. Accordingly, appeals of the security threat determinations made by the TSA are made through the TSA's administrative appeal process.¹⁰

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995).

¹⁰ See 49 U.S.C. 46111. TSA currently is using interim redress procedures for U.S. citizen, U.S. non-citizen national, and lawful permanent resident certificate holders. While section 46111 does not require that TSA provide ALJ review to U.S. non-citizen nationals and lawful permanent residents, TSA has chosen to do so in its interim procedures. TSA also provides U.S. non-citizen nationals and lawful permanent residents with review by the TSA Final Decision Maker if those individuals choose to appeal an ALJ Decision.

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

The existing security threat disqualification regulations, 14 CFR parts 61.18, 63.14, and 65.14, disqualify any person who the TSA has found to be a security threat from obtaining an FAA certificate. These regulations went into effect on January 24, 2004. A year later, the President signed statutory authority in 49 U.S.C. 46111 and 49 U.S.C. 44903(j)(2)(D)(i) into law. 49 U.S.C. 46111 directs the FAA to take action against the holder of any part of a certificate in response to a security threat determination by the TSA and also provides an appeal process for U.S. citizens. 49 U.S.C. 44903(j)(2)(D)(i) directs TSA to coordinate with the FAA to ensure that individuals are screened against a consolidated and integrated terrorist watchlist maintained by the federal government prior to being certificated by the FAA. The existing regulations and the statutory authority are virtually identical, and the FAA has been relying on the statutory authority, not the existing regulations, to prevent individuals who are security threats from obtaining or holding a certificate. The FAA has not updated its regulations since the enactment of statutory authority 49 U.S.C. 46111 and 49 U.S.C. 44903(j)(2)(D)(i). Since there are no new requirements in the proposed rule, the expected outcome would be a minimal cost, if any, and a full regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal economic impact.

The FAA has, therefore, determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule provides similar requirements found in the existing security threat disqualification regulations in 14 CFR 61.18, 63.14, and 65.14, and statutory authority located at 49 U.S.C. 46111 and 49 U.S.C. 44903(j)(2)(D)(i). Thus, the proposed rule would not impose any new costs to the industry. The expected outcome would be a minimal economic impact on any small entity affected by this rulemaking action.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this proposed rulemaking would not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that the objective of the rule is for the safety of the American public and is therefore not considered an unnecessary obstacle to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments,

in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined preliminarily that this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States.

B. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

C. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this proposed action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 3

Aviation safety.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airman, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter 1 of title 14, Code of Federal Regulations as follows:

PART 3 – GENERAL REQUIREMENTS

1. The authority citation for part 3 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44704, and 46111.

2. Add a new subpart A heading to read as follows:

Subpart A – General Requirements Concerning Type Certificated Products or Products, Parts, Appliances, or Materials that May Be Used On Type-Certificated Products

3. Designate §§ 3.1 and 3.5 as subpart A.

4. Add new subpart B to read as follows:

Subpart B – Security Threat Disqualification

Sec.

3.200 Effect of TSA notification on a certificate or any part of a certificate held by an individual.

3.205 Effect of TSA notification on applications by individuals for a certificate or any part of a certificate.

§ 3.200 Effect of TSA notification on a certificate or any part of a certificate held by an individual.

When the TSA notifies the FAA that an individual holding a certificate or part of a certificate issued by the FAA poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety, the FAA will issue an order amending, modifying, suspending, or revoking any certificate or part of a certificate issued by the FAA.

§ 3.205 Effect of TSA notification on applications by individuals for a certificate or any part of a certificate.

(a) When the TSA notifies the FAA that an individual who has applied for a certificate or any part of a certificate issued by the FAA poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety, the FAA will hold the individual's certificate applications in abeyance pending further notification from the TSA.

(b) When the TSA notifies the FAA that the TSA has made a final security threat determination regarding an individual, the FAA will deny all the individual's certificate applications. Alternatively, if the TSA notifies the FAA that it has withdrawn its security threat determination, the FAA will continue processing the individual's applications.

**PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND
GROUND INSTRUCTORS**

5. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701-44703, 44707, 44709-44711, 44729, 44903, 45102-45103, 45301-45302; Sec.2307 Pub. L. 114-190, 130 Stat. 615 (49U.S.C. 44703 note).

§ 61.18 Security disqualification [Removed and Reserved]

6. Remove and reserve § 61.18.

**PART 63- CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN
PILOTS**

7. The authority citation for part 63 continues to read as follows:

AUTHORITY: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

§ 63.14 Security disqualification [Removed and Reserved]

8. Remove and reserve § 63.14.

**PART 65 – CERTIFICATION: AIRMEN OTHER THAN FLIGHT
CREWMEMBERS**

9. The authority citation for part 65 continues to read as follows:

AUTHORITY: 49 U.S.C. 106(f), 106(g). 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

§ 65.14 Security disqualification [Removed and Reserved]

10. Remove and reserve § 65.14.

Issued, under the authority provided by 49 U.S.C. 106(f), 46111, and 44903(j) in
Washington, DC, on July 16, 2018.

Charles Trippe

Chief Counsel

[FR Doc. 2018-15534 Filed: 7/20/2018 8:45 am; Publication Date: 7/23/2018]